

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 984 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

JEAN MARION NEWMAN
S.S.A. No.

PRECEDENT
BENEFIT DECISION
No. P-B-325

FORMERLY BENEFIT DECISION No. 984

The above-named claimant on August 24, 1944, appealed from a decision of the Referee (R-2477-20442-44) which held that the claimant had failed to apply for suitable employment without good cause within the meaning of Section 56(b) of the Unemployment Insurance Act [now section 1257(b) of the Unemployment Insurance Code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Claimant was employed for a period of approximately three years as a restaurant cashier and P.B.X. operator at a salary of \$150.00 per month. She was employed from 9:00 a.m. to 6:00 p.m. except occasionally when she relieved one of the night cashiers. On these occasions she finished work at approximately 12:45 a.m. and on all such occasions her husband called for her to escort her home. She voluntarily left this work on May 3, 1944, to visit her husband who is a member of the armed forces located at a camp in California. Upon her return three or four weeks later her position had been filled.

Claimant registered for work and filed a claim for benefits on June 13, 1944, in the Hollywood office of the

Department of Employment. On June 28, 1944, the Department made a determination that the claimant was ineligible to receive benefits from June 25, 1944, to August 5, 1944, on the ground that she had failed to apply for suitable employment without good cause within the meaning of Section 56(b) of the Unemployment Insurance Act [now section 1257(b) of the code].

On June 27, 1944, the claimant was offered work as a night cashier at a restaurant located within one block of her former place of employment and approximately four blocks from her home. Her hours of work would have been from 4:30 p.m. to midnight, the closing hour, but because of the necessity of waiting until all customers had departed and balancing accounts she would not have been able to leave until approximately 1:00 a.m. The restaurant where claimant was offered employment was located in a section of Hollywood where recently there have been a number of crimes of violence including murder. Testimony was also offered that in this locality unescorted women were frequently accosted on the streets. Claimant failed to apply for this work because of her fear of returning home alone after work and because she had promised her husband who is now serving with the armed forces overseas that she would not accept night work. For failing to apply for this work the claimant was disqualified under the provisions of Section 56(b) of the Act [now section 1257(b) of the code].

REASON FOR DECISION

Section 13(a) of the Unemployment Insurance Act [now section 1258 of the code] requires this Appeals Board to consider the degree of risk involved to an individual's safety and morals in determining the suitability of employment. In the application of these particular factors the degree to which they must exist in any particular case need not be so marked that acceptance of any offer of work would result in immediate injury or be detrimental to an individual's morals. It is sufficient to render work unsuitable provided the facts in a particular case disclose the individual to whom the work is offered has a reasonably grounded apprehension that acceptance thereof would result in a probable risk to safety or morals.

In the instant matter we are of the opinion that the record shows that the claimant had a reasonable fear

that bodily harm might result while returning to her home if she accepted the offered employment. Therefore, we conclude that as to this claimant the work was not suitable within the provisions of Section 13(a) of the Act /now section 1258 of the code.

DECISION

The decision of the Referee is reversed. Claimant is allowed benefits if otherwise eligible.

Sacramento, California, September 29, 1944.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

HOMER W. BUCKLEY, Chairman

MICHAEL B. KUNZ

EDGAR E. LAMPTON

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 984 is hereby designated as Precedent Decision No. P-B-325.

Sacramento, California, June 22, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

CONCURRING - Written Opinion Attached

MARILYN H. GRACE

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

CONCURRING OPINION

I concur with the designation of Benefit Decision No. 984 as Precedent Decision No. P-B-325.

I wish to state that my concurrence is based on the principle set forth in this case that work is unsuitable provided the facts in a particular case disclose the individual to whom the work is offered has a reasonably grounded apprehension that acceptance thereof would result in a probable risk to safety or morals.

The factual situation in this case, which gave rise to this principle, was 1944 and 1 a.m.; if the same facts arose at 1 a.m. in 1976, I would apply the same principle. I would also apply the same principle regardless of the hour of day or night.

Unfortunate though it may be, it is apparent, as shown by statistics relating to violent crimes against both men and women on the streets of the United States today, there is greater danger in many areas than ever before. There are situations which arise in today's world--regardless of the hour--where an individual has a reasonably grounded apprehension that acceptance of such work would result in a probable risk to safety or morals.

MARILYN H. GRACE

DISSENTING OPINION

I dissent.

The time was June 1944. World War II was in its third year. The long awaited invasion of Normandy by the Allies was the main topic of conversation. In the Pacific, Marines battled for a toehold on several hunks of coral with names that few, if any, Americans had ever learned in high school geography classes. Hostilities would be waged for another year in Europe and for fourteen more months in the Pacific. But in June 1944, although hope of Allied victory was on the upturn, the eventual outcome was still very much in doubt.

On the home front, America's mass production might was spewing out the machines and materiel necessary to fight the battles on land, in the air, and on and under the sea. Instead of today's anti-war graffiti, posters admonished us, "A slip of the lip can sink a ship" and suggested to those who were unable to aid directly in the war effort, "Stick to your knitting--we need Bundles for Britain." The Andrews Sisters had recorded an upbeat version of "Don't Sit Under the Apple Tree (With Anyone Else But Me)" and there was a plaintive ballad making the rounds titled "When the Lights Go On Again (All Over the World)." This latter song had special significance here on the Pacific Coast.

The attack on the United States had erupted with the infamous bombing of Pearl Harbor. In the months that followed, with no Pacific fleet of any real strength for protection, the discomfort of West Coast residents was increased by reports of sightings of enemy submarines and recon vessels not far from our shores. The only actual enemy invasion of United States mainland territory occurred in Alaska's chain of Aleutian Islands, which intensified the uneasiness of those who made their homes on the Pacific Coast.

Because of the very real fear of enemy air raids, shelling by warships and actual invasion, strict defense security measures were effectuated on the Pacific Coast immediately after the attack on Pearl Harbor. A dim-out

was imposed. Although less rigorous than the blackout of the British Isles, the dim-out was nonetheless a severe change from the bright lights for which West Coast areas like Hollywood had been noted. No outdoor advertising signs were allowed to be lighted. Athletic events "under the lights" were banned. Store window lighting was dimmed. Indoor bright lights which reflected out-of-doors had to be dimmed or shielded. Block wardens, mobilized as part of a massive civil defense effort, kept watchful surveillance to prevent violations of the dim-out. A curfew was imposed on establishments selling alcoholic beverages, and many other types of retail businesses closed at dusk. Headlamps and interior lighting of public conveyances were reduced in illumination. Gasoline rationing served to keep most private vehicles off the streets at night except for necessary trips. Street lighting itself was either turned off or reduced substantially in density to a flicker of its former brilliance.

Thus, when in late June 1944, Jean Marion Newman was offered work as night cashier at a restaurant in Hollywood, which work would have lasted until approximately 1 a.m. each night, she faced the real prospect of having to walk home in near-total darkness with hardly a law-abiding soul afoot. Hollywood at that moment in history was not the neon jungle of garish splendor and intensity as we see it on a June night thirty-two years later. One o'clock in the morning in Hollywood circa 1976 is barely the shank of the evening. Liquor-selling establishments still have one hour before closing time. There is no curfew. Some restaurants and retail businesses remain open all night. Vehicular traffic abounds. Pedestrians, most of whom are law-abiding, are frequently present.

My point is that the decision in the instant case was one of practical necessity in the wartime-footing summer of 1944, and at that time it made good sense. Such is simply not true today. The irremediable factors which were present in 1944 are no longer factors in the liberated era of 1976. As Dean Prosser has often stated: "When the reason for the rule ceases, so must the rule." The reasons for the rule in the instant case evaporated on V-J Day in 1945. To resurrect it today is to impose a rule, the reasons for which ceased thirty-one years ago.

HARRY K. GRAFE